

**REDACTED DECISION – DK# 17-142 RP**

**BY: CRYSTAL S. FLANIGAN, ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON AUGUST 8, 2018  
ISSUED ON FEBRUARY 8, 2019**

**BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS**

**FINAL DECISION**

On May 2, 2017, the Tax Accounting Administration of the West Virginia State Tax Commissioner's Office (hereinafter "Tax Department" or "Respondent") issued a refund denial letter (Letter Id # \_\_\_\_\_) to the Petitioner in Personal Income Account Number \_\_\_\_\_. This refund denial was issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq.*, of the West Virginia Code. The refund denial stated that the Statute of Limitations for claiming a refund on tax year ending December 31, 2012, expired and the claim for refund was therefore, denied.

The Petitioner timely filed his Petition for Refund with this Tribunal on May 15, 2017. Subsequently, notice of a hearing on the petition was sent to the parties and in accordance with the provisions of West Virginia Code Section 11-10A-10, a hearing was held on May 1, 2018, in Charleston, West Virginia, and the matter became ripe for decision at the conclusion of the same.

**FINDINGS OF FACT**

1. The Petitioner is a resident of West Virginia and therefore, is required to pay personal income tax.
2. The Petitioner filed his 2011 West Virginia Income Tax Return on April 15, 2012 that showed he had an overpayment of \$ \_\_\_\_\_. (Petitioner's Ex. 2 and 3, Line 23)

3. The Petitioner elected to credit the 2011 taxes overpayment to his 2012 income taxes but did not file another tax return until 2016. (Petitioner's Ex. 2, Line 26)

4. The Petitioner filed his 2012 West Virginia Personal Income Tax (hereinafter "original 2012 tax return" return on April 18, 2016. Even at this time he did not request for the overpayment and had \$\_\_\_\_\_ as taxes due. (Petitioner's Ex. 3)

5. On May 15, 2017, the Petitioner filed an amended return for 2012 (hereinafter "amended 2012 tax return") that included the request for his credit. (Petitioner's Ex. 8)

6. The Petitioner sought to apply the overpayment to his 2012 West Virginia Personal Income Tax Return. (Petitioner's Ex. 8, Line 27)

7. The Petitioner is seeking an overpayment of \$\_\_\_\_\_ in his Petition which is the difference between the \$\_\_\_\_\_ overpayment and the \$\_\_\_\_\_ taxes due that were on the Petitioner's original 2012 tax return.

8. The Respondent denied the overpayment as being filed more than three years as exceeding the Statute of Limitations for a refund or credit. (Refund Denial Letter, May 5, 2017)

### **DISCUSSION**

The Petitioner is a West Virginia resident who is required to pay West Virginia State Income Taxes. The Petitioner is seeking the overpayment of \$\_\_\_\_\_ from his 2012 West Virginia State Income Tax Return. The issue in this case is whether the Petitioner timely claimed his overpayment from his 2012 tax return. The controlling statute and its limitations is West Virginia Code Section 11-10-14(a) and (l), respectively, which state as follows:

*(a) Refunds or credits of overpayments. -- In the case of overpayment of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, the tax commissioner shall, subject to the provisions of this*

article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.

W. Va. Code Ann. § 11-10-14 (West)

*(l) Limitation on claims for refund or credit. --(1) General rule. --* Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, whichever of the periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax (or fee) was paid, and not thereafter.

W. Va. Code Ann. § 11-10-14 (West)

West Virginia Code Section 11-10-14(l) discusses the limitations for making a claim as being within (2) two or (3) three years. However, no claim for an overpayment was made during either timeframe. For the purposes of this decision, the difference two (2) and three (3) year time limitations in the above statute will not be discussed because the Petitioner did not meet either timeframe. The Petitioner did not file any 2012 tax return until April 18, 2016, did not claim his overpayment, but instead had taxes due. He finally claimed his overpayment when he filed his amended 2012 tax return on May 15, 2017, which was well beyond the statute of limitations.

The Petitioner filed his 2011 West Virginia State Income Tax Return on April 15, 2012. The 2011 return showed an overpayment in the amount of \$ \_\_\_\_\_ on line 23. The Petitioner elected to credit his 2011 overpayment of \$ \_\_\_\_\_ to his 2012 Tax for his 2012 West Virginia

State Income Tax Return. The Petitioner's 2012 West Virginia State Income Tax Return was due on Monday, April 15, 2013.

The Petitioner filed his original 2012 tax return on April 18, 2016, which is three years and three days later than the deadline of April 15, 2013. This filing was the first time the Petitioner had filed his 2012 tax return but did not claim his overpayment. Once he did not claim his overpayment as a refund, it became a credit against future tax periods under West Virginia Code Section 11-10-14(a). However, these credits for future tax periods are not without limitation pursuant to West Virginia Code Section 11-10-14(l). In order to receive a credit of an overpayment pursuant to this code section, the Petitioner is required to file his 2012 return within three (3) years of the tax return's due date which is no later than April 15, 2016.

The Internal Revenue Service cites to April 15<sup>th</sup> as being the typical date for filing deadlines unless it falls on a Saturday, Sunday or legal holiday and the due date is delayed until the next business day.<sup>1</sup> West Virginia personal income taxes are generally due April 15<sup>th</sup> following the tax year. W.Va. Code St. R. § 110-21-52.1.1 The 2012 tax year would have a due date of Monday, April 15, 2013. Thus, the Petitioner would have had until Friday, April 15, 2016, to file his 2012 State of West Virginia Tax Return in order to comply with the statute and obtain his overpayment. The original 2012 tax return made no mention of an overpayment or credit that the Petitioner was choosing to take on line 24. Conversely, the original return had taxes due. The May 5, 2017 amended 2012 tax return was the first time the Petitioner had claimed his overpayment which was well over a year past the deadline.

Pursuant to West Virginia Code Section 11-10-14(h), the filing of a claim means the following:

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<sup>1</sup> <https://www.irs.gov/filing/individuals/when-to-file>

*(h) Forms for claim for refund or a credit; where return constitutes claim.-- The tax commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of tax has been made constitutes a claim for refund or credit.* (Emphasis added).

W. Va. Code Ann. § 11-10-14 (West)

A taxpayer's signed return showing the amount of the overpayment of tax is required to make claim for an overpayment and must be received no later than three years past the deadline to comply with the statutory timeframe.

On May 15, 2017, the Petitioner filed an amended 2012 West Virginia State Income Tax Return wherein he chose for the first time to make a claim for his overpayment. However, a West Virginia taxpayer has three (3) years from its original due date to amend a return from its due date, which was April 15, 2013 for the 2012 tax year. Therefore, the Petitioner was well past the deadline to file a claim for a credit.

#### CONCLUSIONS OF LAW

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. § 11-1-2 (West 2010).

2. Each year a tax is imposed, based upon a rate set by the legislature, on the West Virginia taxable income of every individual, estate and trust. *See* W. Va. Code Ann. § 11-21-3 (West 2010).

3. "The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable." W. Va. Code Ann. § 11-10-11(a) (West 2010).

4. Resident individual means an individual: (1) Who is domiciled in this State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State W. Va. Code Ann. § 11-21-7 (West 2013).

5. The Petitioner is a resident individual, as that term is defined in West Virginia Code Section 11-21-7, and as such, pays West Virginia taxes.

6. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he is entitled to the refund claimed by him. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (2003).

7. Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or by any article of this chapter, or this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in this section, file a claim for refund, or credit, within 3 years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return. W.Va. Code § 11-10-14(l).

8. The filing of a taxpayer's signed return constitutes making a claim for a refund or credit. W.Va. Code § 11-10-14(h)

9. The returns of individuals, trusts, estates or partnerships required to be made under these regulations shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year. W.Va. Code St. R. § 110-21-52.1.1

10. The Petitioner in this matter has not carried his burden of proving that the refund denial was erroneous, unlawful, void or otherwise invalid.

**FINAL DISPOSITION**

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the refund denial issued on May 2, 2017, is **AFFIRMED**.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

By:

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Crystal S. Flanigan  
Administrative Law Judge

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Date Entered